



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-812]

Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

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Background

On August 2, 2012, the Department of Commerce (“the Department”) published its preliminary determination in the antidumping duty investigation of steel wire garment hangers from the Socialist Republic of Vietnam (“Vietnam”).¹ On August 2, 2012, Petitioners² filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration. On August 2, 2012, the Department issued a letter to the TJ Group,³ the remaining cooperative mandatory respondent, requesting monthly shipment data from August 2011 through May 2012.⁴ On August 3, 2012, the TJ Group filed a letter withdrawing its participation from this investigation.⁵

¹ See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 46044 (August 2, 2012) (“Preliminary Determination”).

² M&B Metal Products Company, Inc.; Innovative Fabrication LLC / Indy Hanger; and US Hanger Company, LLC.

³ The TJ Group consists of: the Pre-Supreme Entity, Infinite Industrial Hanger Limited, and TJ Co., Ltd. See, e.g., Preliminary Determination, 77 FR at 46047-48, 46053 n. 109.

⁴ See Department’s letter to the TJ Group, dated August 2, 2012, at 1-2.

⁵ See TJ Group’s Letter of Withdrawal, dated August 3, 2012, at 1-2.

In accordance with 19 CFR 351.206(c)(1), when a critical circumstances allegation is filed 30 days or more before the scheduled date of the final determination, the Department will issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Because the critical circumstances allegation in this case was submitted after the preliminary determination was published, the Department must issue its preliminary findings of critical circumstances no later than 30 days after the allegation was filed.⁶

Legal Framework

Section 733(e)(1) of the Tariff Act of 1930, as amended (“the Act”), provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. This section of the regulations further provides that,

⁶ See 19 CFR 351.206(c)(2)(ii).

if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.

Critical Circumstances Allegation

In their allegation, Petitioners contend that, based on the dumping margins assigned by the Department in the Preliminary Determination, importers knew or should have known that the merchandise under consideration was being sold at less than fair value (“LTFV”).⁷ Petitioners also contend that, based on the preliminary determination of injury by the U.S. International Trade Commission (“ITC”), there is a reasonable basis to impute importers’ knowledge that material injury is likely by reason of such imports.⁸ Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), Petitioners submitted import statistics for the “like product” covered by the scope of this investigation for the period between August 2011 and May 2012, as evidence of massive imports of garment hangers from Vietnam during a relatively short period..⁹

Analysis

The Department’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to the Department, such as: (1) the evidence presented in Petitioners’ critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.¹⁰ As further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) the

⁷ See Petitioners’ Critical Circumstances Allegation, dated August 2, 2012, at 2-3.

⁸ See id. at 3-4.

⁹ See id. at 4-5, Attachment 1.

¹⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China, 73 FR 31970, 31972-73 (June 5, 2008) (“Carbon Steel Pipe”); Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China, 74 FR 2049, 2052-53 (January 14, 2009) (“SDGE”).

evidence presented in Petitioners' August 2, 2012, allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In determining whether a history of dumping and material injury exists, the Department generally has considered current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country.¹¹ In this case, the current investigation of the subject merchandise marks the first instance that the Department has examined whether the goods are dumped into the United States. As a result, the Department previously has not imposed an antidumping duty order on the subject merchandise. Moreover, the Department is not aware of any antidumping duty order on subject merchandise from Vietnam in another country. Therefore, the Department finds no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii): The importer knew or should have known that exporter was selling at less than fair value and that there was likely to be material injury

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.

The Department normally considers margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.¹² The Department preliminarily determined a margin of 135.81

¹¹ See Carbon Steel Pipe, 73 FR at 31972-73; SDGE, 74 FR 2052-53.

¹² See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005).

percent for the TJ Group, which was also assigned as the separate rate to the non-selected separate rate applicants.¹³ Additionally, the Department preliminarily assigned a margin of 187.51 percent, as adverse facts available (“AFA”) to the Vietnam-wide entity, which includes one of the mandatory respondents, South East Asia Hamico Export Joint Stock Company (“Hamico”).¹⁴ Therefore, because the preliminary margins are greater than 25 percent for all producers and exporters, we preliminarily find, with respect to all producers and exporters, that there is a reasonable basis to believe or suspect that importers knew, or should have known, that exporters were selling the merchandise under consideration at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.¹⁵ If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.¹⁶ Here, the ITC found that “there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan and Vietnam of steel wire garment hangers, provided for in subheading 7326.20.00 of the Harmonized Tariff Schedule of the United States”¹⁷

¹³ See Preliminary Determination, 77 FR at 46053.

¹⁴ See id.

¹⁵ See, e.g., Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 75 FR 24572, 24573 (May 5, 2010) (“Salt Critical Circumstances Prelim”).

¹⁶ See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005).

¹⁷ See Steel Wire Garment Hangers from Taiwan and Vietnam, Investigation Nos. 701–TA–487 and 731–TA–1197–1198 (Preliminary), 77 FR 9701 (February 17, 2012) (“ITC Prelim”).

Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period

Pursuant to 19 CFR 351.206(h)(2), the Department will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. The Department normally considers a “relatively short period” as the period beginning on the date the proceeding begins and ending at least three months later.¹⁸ For this reason, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the “base period”) to a comparable period of at least three months following the filing of the petition (i.e., the “comparison period”).¹⁹

In their August 2, 2012, allegation, Petitioners maintained that importers, exporters, or foreign producers gained knowledge that this proceeding was possible when the petition for an antidumping duty investigation was filed on December 29, 2011.²⁰ Petitioners noted that when a petition is filed in the second half of a month, the month following the filing is treated as part of the post-petition period.²¹ Petitioners also included in their allegation U.S. import data collected from the ITC’s Dataweb.²² Based on this data, Petitioners provided data for a five-month base period (August 2011 through December 2011) and a five-month comparison period (January 2012 through May 2012), the most recent data available at the time of filing, in showing whether imports were massive.²³ Therefore, based on the date of the filing of the petition, i.e., December 29, 2012, which was in the second half of the month, the Department agrees with Petitioners that January 2012 is the month in which importers, exporters, or producers knew or should have known an antidumping duty investigation was likely, and falls within the comparison period.

¹⁸ See 19 CFR 351.206(i).

¹⁹ See Salt Critical Circumstances Prelim, 75 FR at 24574.

²⁰ See Petitioners’ Critical Circumstances Allegation dated August 2, 2012, at 4.

²¹ See id. at 4.

²² See id. at 5.

²³ See id. at Attachment 1. At the time of filing, import data was available only through May 2012.

We also agree that using a five-month base period and a five-month comparison period for import analysis is reasonable, as the ITC's Dataweb contained data up through May 2012, at the time of filing.²⁴

The TJ Group

It has been the Department's practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison periods.²⁵ However, as noted above, on August 3, 2012, the TJ Group withdrew its participation from this investigation, thus it did not respond to the Department's request for monthly shipment data for the base and comparison periods²⁶ Therefore, the Department preliminarily determines that pursuant to sections 776(a)(2)(A) and (C) of the Act, use of the facts otherwise available are necessary in reaching the applicable determination under this title with respect to the TJ Group.

Furthermore, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference. The TJ Group withdrew its participation from this investigation and from the scheduled verification of its books and records. Thus, we are using facts available, in accordance with section 776(a) of the Act and, pursuant to section 776(b) of the Act, we also find that AFA is warranted so that the TJ Group does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Accordingly, we preliminarily find that there were massive imports of merchandise from the TJ Group, pursuant to our practice.²⁷

²⁴ See "Memorandum to the File, from Irene Gorelik, Analyst, Office 9; Antidumping Duty Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Critical Circumstances Memorandum," ("Dataweb Memo") dated concurrently with this notice at Exhibits I-II; see also Petitioners' Critical Circumstances Allegation at Attachment I.

²⁵ See, e.g., Carbon Steel Pipe, 73 FR at 31972-73; SDGE, 74 FR 2052-53.

²⁶ See the Department's letter to the TJ Group dated August 2, 2012; see also TJ Group's Letter of Withdrawal dated August 3, 2012.

²⁷ See SDGE, 74 FR at 2052-2053.

Separate Rate Respondents

It has also been the Department's practice to conduct its massive imports analysis of the separate rate respondents based on the experience of investigated companies.²⁸ Thus, we did not request monthly shipment information from the three separate rate respondents. However, where mandatory respondents received AFA, we have not imputed adverse inferences of massive imports to the non-individually examined companies receiving a separate rate. Instead, the Department has relied upon the ITC's Dataweb import statistics, where appropriate, in determining whether there have been massive imports for the separate rate respondents. Accordingly, as the basis for determining whether imports were massive for these separate rate respondents, we are relying on the ITC's Dataweb import statistics as evidence that imports in the post-petition period were massive for those companies. As stated above, in this case, the ITC's Dataweb import volume data shows an increase of 19.62 percent of steel wire garment hanger imports from Vietnam during the comparison period.²⁹ Thus, pursuant to 19 CFR 351.206(h), we determine that this increase, being greater than 15 percent, shows that imports in the five-month comparison period were massive for the separate rate respondents.

Vietnam-Wide Entity (including Hamico) and the Application of AFA

In this investigation, the Department selected Hamico and the TJ Group as mandatory respondents for individual examination.³⁰ In the Preliminary Determination, the Department determined that there were exporters/producers of the merchandise under investigation during

²⁸ See, e.g., Salt Critical Circumstances Prelim, 75 FR at 24575; Carbon Steel Pipe, 73 FR at 31972-73; and SDGE, 74 FR at 2053.

²⁹ See Dataweb Memo at Exhibits I-II; see also Petitioners' Critical Circumstances Allegation at Attachment I.

³⁰ See "Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9; Antidumping Duty Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Respondent Selection," dated February 16, 2012.

the period of investigation from Vietnam, including Hamico,³¹ that either: (1) did not respond to the Department's request for information, or (2) failed to provide information that was not available on the record but necessary to calculate an accurate dumping margin. Therefore, pursuant to 776(a)(2)(A), (B), and (C) of the Act we treated these Vietnamese exporters/producers, including Hamico, as part of the Vietnam-wide entity because they did not qualify for a separate rate.³²

Further, information on the record indicates that the Vietnam-wide entity was non-cooperative because certain companies did not respond to our requests for information.³³ As a result, pursuant to section 776(b) of the Act, we preliminarily found that the use of AFA was warranted to determine the Vietnam-wide rate.³⁴ As AFA, we preliminarily assigned to the Vietnam-wide entity a rate of 187.51 percent, which is the highest transaction-specific rate calculated for the TJ Group.³⁵

Because the Vietnam-wide entity has been unresponsive for the duration of the proceeding, the record does not contain shipment data from the Vietnam-wide entity for purposes of our critical circumstances analysis. Therefore, there is no verifiable information on the record with respect to the Vietnam-wide entity's base and comparison period shipment volumes. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section

³¹ We preliminarily found that Hamico failed to provide the information requested by the Department in a timely manner and in the form required, and significantly impeded the Department's ability to calculate an accurate margin. The Department was unable to calculate a margin without the necessary information, requiring the application of facts otherwise available to Hamico for the purpose of the Preliminary Determination. See Preliminary Determination, 77 FR at 46049-51.

³² See id.

³³ See id.

³⁴ See id.

³⁵ See id., 77 FR at 46053.

782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Furthermore, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference. The Vietnam-wide entity has been non-cooperative during the entire proceeding.³⁶ Thus, we are using facts available, in accordance with section 776(a) of the Act, and, pursuant to section 776(b) of the Act, we also find that AFA is warranted so that the Vietnam-wide entity does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Accordingly, as we have done under similar factual scenarios in other proceedings, we preliminarily find that there were massive imports of merchandise from the Vietnam-wide entity.³⁷

Preliminary Affirmative Determination of Critical Circumstances

Record evidence indicates that importers of steel wire garment hangers knew, or should have known, that exporters were selling the merchandise at LTFV, and that there was likely to be material injury by reason of such sales. In addition, we have imputed that the Vietnam-wide entity and the TJ Group has massive imports during a relatively short period. Lastly, record evidence shows that the separate rate respondents had massive imports during a relatively short period. Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of the merchandise under consideration from the Vietnam-wide entity (which includes Hamico), the TJ

³⁶ See *id.*

³⁷ See, e.g., Salt Critical Circumstances Prelim, 75 FR at 24572-24573.

Group, and the separate rate respondents (CTN Limited Company, Ju Fu Co., Ltd., and Triloan Hangers, Inc.) in this antidumping duty investigation.³⁸

Suspension Of Liquidation

In accordance with section 703(e)(2)(A) of the Act, we are directing the U.S. Customs and Border Protection to suspend liquidation of any unliquidated entries of the merchandise under consideration from Vietnam entered, or withdrawn from warehouse for consumption, on or after May 4, 2012, which is 90 days prior to the date of publication of the Preliminary Determination in the Federal Register.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative critical circumstances determination.

Public Comment

In the Preliminary Determination, the Department stated that case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued.³⁹ However, as noted above, the TJ Group withdrew from participation in this investigation, including the scheduled verification. Consequently, as there were no other verifications scheduled for this proceeding, the Department is setting the public comment deadline herein. Therefore, case briefs addressing any issues in the Preliminary Determination or this preliminary affirmative determination of critical circumstances may be submitted to the Assistant Secretary for Import Administration no later than seven days after the publication date of this notice. Rebuttal briefs, limited to issues raised in case briefs, are due no later than five days after the deadline for submitting case briefs.⁴⁰ A list of authorities used and an executive summary of issues should accompany any briefs submitted to the

³⁸ See section 733(f) of the Act; 19 CFR 351.206(c)(2)(ii).

³⁹ See Preliminary Determination, 77 FR at 46054.

⁴⁰ See 19 CFR 351.309(c)(1)(i), (d)(1).

Department. This summary should be limited to five pages total, including footnotes. All submissions to the Department, including case briefs and rebuttal briefs, must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time, on the date of the established deadline, if applicable. Finally, this notice is a public document and is on file electronically via IA ACCESS. IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of Commerce building.

This determination is published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.206(c)(2)(ii).

Paul Piquado
Assistant Secretary
for Import Administration

August 20, 2012_
Date

[FR Doc. 2012-20911 Filed 08/23/2012 at 8:45 am; Publication Date: 08/24/2012]